

William W. Magruder  
Chief Executive Officer

Case 2005-00296

July 12, 2005

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PUBLIC SERVICE  
COMMISSION

Ms. Beth O'Donnell, Executive Director  
Kentucky Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602

RE: Adoption of Interconnection Agreement Between  
Duo County Telephone Cooperative Corp., Inc. and  
ACC of Kentucky LLC by NCPR, Inc. ("Nextel Partners")

Dear Ms. O'Donnell:

Enclosed for filing are the original and ten (10) copies of an Interconnection Agreement between Duo County Telephone Cooperative Corp., Inc. and NCPR, Inc. ("Nextel Partners"). Nextel Partners is adopting our Interconnection Agreement with ACC of Kentucky LLC. Since we are all in agreement on these issues, we would appreciate an expedited review and Commission approval.

Should you have any questions, please don't hesitate to contact me.

Sincerely,

William W. Magruder  
Chief Executive Officer

WWM:spe  
Enclosures

Cc: Phillip Schenkenberg  
Counsel for Nextel Partners

**INTERCONNECTION AGREEMENT**

**BY AND BETWEEN**

**DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.**

**AND**

**NCPR, INC. ("NEXTEL PARTNERS")**

## AGREEMENT

This Agreement, which shall become effective upon approval by the Public Service Commission of Kentucky ("Effective Date"), is entered into by and between NCPN, Inc. ("Nextel Partners"), a corporation on behalf of itself, and Duo County Telephone Cooperative Corp., Inc. ("Duo County"), a Kentucky corporation, having an office at 2150 North Main Street, P. O. Box 80, Jamestown, Kentucky, 42629, on behalf of itself and its successors and assigns.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

**WHEREAS**, Section 252(i) of the Act requires Duo County to make available any interconnection service, or network element provided under an agreement provided by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

**WHEREAS**, Nextel Partners has requested that Duo County make available the interconnection agreement in its entirety executed between Duo County and ACC of Kentucky LLC, dated December 20, 2001.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this Agreement, Nextel Partners and Duo County hereby agree as follows:

1. Nextel Partners and Duo County shall adopt in its entirety the ACC of Kentucky LLC Interconnection Agreement dated December 20, 2001. Nextel Partners and Duo County have executed revised Appendix "A" and Appendix "C" to designate company-specific interconnection location and exchange data. The ACC of Kentucky LLC Interconnection Agreement is attached hereto as Exhibit 1 and incorporated herein by this reference. The revised Appendix "A" and Appendix "C" are attached and incorporated as Exhibit 2. The adoption of this agreement consists of the following:

<u>Item</u>	<u>Number of Pages</u>
Title Page	1
Adoption Papers	4
Nextel Partners Revised Appendix "A" and Appendix "C"	2
ACC of Kentucky LLC Agreement	<u>25</u>
TOTAL	32

2. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in Section 8 of the ACC of Kentucky LLC Interconnection Agreement. For the purposes of determining the expiration date of the initial term pursuant to Section 8 of the ACC of Kentucky LLC Interconnection Agreement, the initial term termination date shall be December 31, 2006.

3. Nextel Partners shall accept and incorporate any amendments to the ACC of Kentucky LLC's Interconnection Agreement executed as a result of any final judicial, regulatory or legislative action.

4. Every notice, consent, approval or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

William W. Magruder, CEO  
Duo County Telephone Coop. Corp., Inc.  
P. O. Box 80, 2150 North Main Street  
Jamestown, Kentucky 42629  
Fax: 270-343-6500

And

Donald Manning  
NCPR, Inc.  
4500 Carillon Point  
Kirkland, Washington 98022  
Fax: 425-576-3666

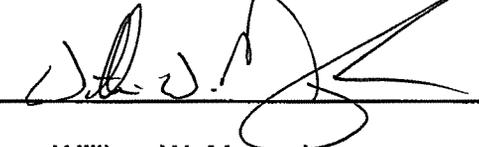
With a copy to:

Dan Kuban  
NCPR, Inc.  
8 Airline Drive, Suite 105  
Albany, New York 12205  
Fax: 952-238-7434

or at such other address as the intended recipient previously named shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in the Agreement, notice by mail shall be effective on the date it is officially recorded by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement through their authorized representatives.

Duo County Telephone Coop. Corp., Inc.

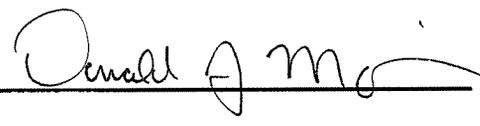
By: 

Name: William W. Magruder

Title: Executive Vice President/CEO

Date: 7/12/05

Nextel Partners

By: 

Name: **Donald J. Manning**

Title: **Vice President**

Date: 7/1/05

## EXHIBIT 1

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**AGREEMENT**

**FOR**

**FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF  
TELECOMMUNICATIONS TRAFFIC**

**CMRS-LEC AGREEMENT**

Between

**ACC OF KENTUCKY, LLC**

and

**DUO COUNTY TELEPHONE COOPERATIVE CORP., INC.**

SEW  
12/5/01

## Table of Contents

Introduction

Recitals

- 1.0 Definitions
- 2.0 Interpretation and Construction
- 3.0 Scope
- 4.0 Service Agreement
  - 4.1 Methods of Interconnection
  - 4.2 Service Arrangement
  - 4.3 Signaling
- 5.0 Compensation Arrangements
  - 5.1 Subject Traffic
  - 5.2 Rate Structure
  - 5.3 Non-Recurring Charges
  - 5.4 Inter-MTA Traffic
  - 5.5 Traffic Distribution
- 6.0 Notice of Changes
- 7.0 General Responsibilities of the Parties
- 8.0 Effective Date, Term and Termination
- 9.0 Cancellation Charges
- 10.0 Indemnification
- 11.0 Limitation of Liability
- 12.0 Compliance with Laws and Regulations
- 13.0 Disclaimer of Representation and Warranties
- 14.0 Miscellaneous
  - 14.1 Authorization
  - 14.2 Disclaimer of Agency; No Third Party Beneficiaries; Independent Contractor
  - 14.3 Force Majeure
  - 14.4 Treatment of Proprietary and Confidential Information
  - 14.5 Choice of Law
  - 14.6 Taxes
  - 14.7 Assignability
  - 14.8 Billing and Payment; Disputed Amounts
  - 14.9 Dispute Resolutions
  - 14.10 Notices
  - 14.11 Joint Work Product
  - 14.12 No License
  - 14.13 Survival
  - 14.14 Entire Agreement
  - 14.15 Non-Waiver
  - 14.16 Publicity and Use of Trademarks or Service Marks
  - 14.17 Severability
  - 14.18 Counterparts
  - 14.19 Modification, Amendment, Supplement or Waiver
  - 14.20 Changes in Law

SEW  
12/15/01

**AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION  
FOR TRANSPORT AND TERMINATION OF TELECOMMUNICATIONS TRAFFIC  
(CMRS-LEC AGREEMENT)**

**Introduction**

Pursuant to this CMRS-LEC Agreement for Facilities-Based Network Interconnection for Transport and Termination of Telecommunications Traffic, Duo County Telephone Cooperative Corp., Inc. ("Duo County Telephone Cooperative") and ACC of Kentucky LLC ("ACC of Kentucky") will extend certain network arrangements to one another as specified below.

**Recitals**

WHEREAS, ACC of Kentucky is a Commercial Mobile Radio Services ("CMRS") provider licensed by the Federal Communications Commission (FCC) to provide CMRS; and

WHEREAS, Duo County Telephone Cooperative is a Local Exchange Carrier ("LEC") providing telecommunications services in the Commonwealth of Kentucky; and

WHEREAS, the Parties desire to interconnect their respective CMRS and LEC network facilities for the purpose of delivery of specific traffic for transport and termination on the other Party's network; and

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations and the terms and conditions under which they will interconnect their networks and provide services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Duo County Telephone Cooperative and ACC of Kentucky hereby agrees as follows:

**1.0 Definitions**

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Communications Act of 1934, as amended. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" is as defined in the Act.

1.3 "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:

"End Office Switches" which are used to terminate lines from individual stations for the purpose of interconnection to each other and to trunks; and

"Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. A Central Office Switch may be employed as a combination End Office/Tandem Office Switch.

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1.4 "Commercial Mobile Radio Service" or "CMRS" means Commercial Mobile Radio Service as defined in Part 20 of the FCC's Rules.

1.5 "Commission" means the Kentucky Public Service Commission.

1.6 "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis, and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be Signaling System Seven ("SS7").

1.7 "DS1" is a digital signal rate of 1,544 Mbps (mega bits per second).

1.8 "DS3" is a digital signal rate of 44.736 Mbps.

1.9 "FCC" means the Federal Communications Commission.

1.10 "Information Service" is as defined in the Act.

1.11 "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider, that provides information services.

1.12 "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.

1.13 "Interconnection" for purposes of this Agreement is the linking of the ACC of Kentucky and Duo County Telephone Cooperative networks for the delivery of traffic.

1.14 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

1.15 "Inter-MTA Traffic" is: (a) traffic originated by a CMRS end user of ACC of Kentucky in one MTA and terminated to an end user of Duo County Telephone Cooperative in another MTA; and (b) traffic originated by an end user of Duo County Telephone Cooperative in one MTA and terminated to an end user of ACC of Kentucky in another MTA. Inter-MTA Traffic is subject to Duo County Telephone Cooperative's originating and terminating Switched Exchange Access Service charges.

1.16 "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.17 "Major Trading Area" or "MTA" means Major Trading Area as defined in Section 24.202(a) of the FCC's rules.

1.18 "Multifrequency" means a signaling system for use between switching systems which uses a method of sending pulses over a circuit by using one pair of tones from a total set of five tones to encode each digit.

1.19 "NXX" means a three-digit code valid within an area code which appears as the first three digits of a seven-digit telephone number with the exception of the special 500, 600, 700, 800 and 900 codes and other similar special codes which may come into common usage in the future.

1.20 "Party" means either Duo County Telephone Cooperative or ACC of Kentucky, and "Parties" means Duo County Telephone Cooperative and ACC of Kentucky.

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1.21 "Point of Connection" or "POC" is a mutually agreed upon point of demarcation between networks where the delivery of traffic from one Party to the other Party takes place.

1.22 "Rate Center" means the specific geographic point ("Vertical and Horizontal " or "V & H" coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V & H coordinate which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area. The use by a CMRS provider of a Rate Center V & H for mobile CMRS services has no specific geographic meaning.

1.23 "Subject Traffic" is telecommunications traffic that is subject to Section 251(b)(5) of the Act. With respect to network interconnection between a CMRS licensee and a LEC, Subject Traffic is defined as traffic which is originated by an end user of one Party and terminates to an end user of the other Party within the same Major Trading Area ("MTA"), provided that the end user of ACC of Kentucky is a two-way CMRS customer and the traffic is delivered by either Party over the connecting facilities covered by this Agreement. Subject Traffic is defined under this Agreement only for the purpose of defining the scope of traffic that is subject to compensation pursuant to 47 C.F.R. § 51.701(e) of the FCC's rules. The definition and use of the term Subject Traffic for purposes of this Agreement has no effect on the definition of local traffic or the geographic area associated with local calling under either Party's respective end user service offerings.

1.24 "Telecommunications" is as defined in the Act.

1.25 "Telecommunications Carrier" is as defined in the Act.

1.26 "Termination" is, with respect to Subject Traffic delivered by one Party to the other Party over the facilities established pursuant to this Agreement, the switching of such traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

1.27 "Transport" is, with respect to Subject Traffic delivered by one Party to the other Party over the facilities established pursuant to this Agreement, the transmission and any necessary tandem switching of such telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

## 2.0 Interpretation and Construction

2.1 All references to Sections, Exhibits, Appendices and Schedules shall be deemed to be references to Sections of, and Exhibits, Appendices and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of references only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including ACC of Kentucky's, Duo County Telephone Cooperative's or other third party offerings, guides or practices), statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

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12/15/01

2.2 The Parties acknowledge that some of the services, facilities or arrangements described herein reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Appendix hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this Agreement shall prevail. This Agreement supersedes any prior agreements between the Parties.

### 3.0 Scope

3.1 This Agreement sets forth the terms, conditions and prices under which the Parties agree to interconnect the CMRS network of ACC of Kentucky and the LEC network of Duo County Telephone Cooperative for the purposes of delivering certain traffic within the scope of this Agreement specifically including:

3.1.1 CMRS to LEC Subject Traffic that is: (a) originated on the CMRS network of ACC of Kentucky; (b) delivered to the Duo County Telephone Cooperative network over the connecting facilities pursuant to this Agreement; and (c) terminated on the incumbent LEC network of Duo County Telephone Cooperative;

3.1.2 LEC to CMRS Subject Traffic that is: (a) originated on the incumbent LEC network of Duo County Telephone Cooperative; (b) delivered to ACC of Kentucky over the connecting facilities pursuant to this Agreement; and (c) terminated on the CMRS network of ACC of Kentucky;

3.1.3 Inter-MTA Traffic that is: (a) originated on the network of one of the Parties; (b) delivered to one of the Parties over the connecting facilities pursuant to this Agreement; and (c) terminated on the network of one of the Parties;

3.1.4 IXC traffic that is: (a) delivered to the network of Duo County Telephone Cooperative by an IXC or any other carrier that has obtained terminating access services from Duo County Telephone Cooperative; and (b) to be terminated to telephone numbers of mobile customers of ACC with an associated rate center within the Russell Springs exchange of Duo County Telephone Cooperative.

3.2 This Agreement also provides for specific compensation between the Parties for the Transport and Termination of Subject Traffic on each Party's network as set forth in this Agreement. The specific provisions applicable to compensation for the Transport and Termination of Subject Traffic do not apply to any other types of traffic or in any other geographic area.

3.3 Subject Traffic does not include: (a) Inter-MTA Traffic discussed in Section 5.4; (b) traffic that either Party originates to, or terminates from, an interexchange carrier regardless of the originating and terminating end points of a call with the exception of the limited traffic discussed in Section 3.1.4, or (c) traffic that Duo County Telephone Cooperative originates to, or terminates from, any carrier over facilities and/or service arrangements that the carrier has obtained pursuant to an access service arrangement regardless of the originating and terminating points of a call with the exception of the limited traffic discussed in Section 3.1.4. All traffic that Duo County Telephone Cooperative originates to, or terminates from, an interexchange carrier will be subject to access charges to be retained by Duo County Telephone Cooperative. There will be no sharing of access charge revenue that Duo County Telephone Cooperative bills either interexchange carriers or any other carriers that obtain access services

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from Duo County Telephone Cooperative. There will be no access services provided jointly between the Parties pursuant to this Agreement.

3.4 This Agreement only applies with respect to the traffic delivered over the connecting network arrangement(s) between the Parties. This Agreement only applies to traffic originated or terminated by ACC of Kentucky to its CMRS mobile users that are located within the wireless service area of ACC of Kentucky defined as the set of counties as set forth in Appendix C. The terms of this Agreement, including, but not limited to, traffic distribution and the proportions of minutes of use that are Subject Traffic and Inter-MTA Traffic, are directly related to and dependent on the specific service area of ACC of Kentucky.

3.5 This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. This Agreement has no effect on the definition of end user services that either Party offers to its end user customers, the services either Party chooses to offer to its respective end user customers, and rate levels or rate structures that either Party charges its end users for services.

3.6 Compensation for the Transport and Termination of Subject Traffic applies only to traffic associated with the provision of local exchange carrier services by Duo County Telephone Cooperative and to traffic associated with the provision of two-way CMRS by ACC of Kentucky. With the sole exception of the traffic discussed in Section 3.1.4, neither Party shall provide an intermediary or transit traffic function for the other Party's connection of its end users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary functions. Except as set forth in Section 3.1.4, this Agreement does not obligate either Party to utilize any intermediary or transit traffic function of the other Party. Traffic associated with fixed wireless services of ACC of Kentucky is specifically excluded from this Agreement. Traffic associated with any service that ACC of Kentucky may provide to ISPs is excluded from this Agreement. With the sole exception of the traffic discussed in Section 3.1.4, this Agreement does not apply to traffic originated, terminated or carried by or on third party networks or to any other traffic not specifically identified in this Section 3.0.

3.7 Connecting facilities established pursuant to this Agreement shall not be used by either Party to deliver any traffic not specifically allowed under this Agreement in this Section 3.0. It will constitute a default of this Agreement for a Party to deliver, over the connecting network facilities, any traffic other than the traffic that is within the scope of this Agreement as specifically identified in this Section 3.0.

#### 4.0 Service Agreement

4.1 **Methods of Interconnection.** The Parties agree to interconnect their respective networks within the incumbent LEC service area of Duo County Telephone Cooperative at one or more Points of Connection as established by Duo County Telephone Cooperative. Interconnection will be provided through an appropriate Duo County Telephone Cooperative tandem switching office. The POC(s) will be set forth in Appendix A. Duo County Telephone Cooperative shall make available, to ACC of Kentucky at the POC(s), trunks over which ACC of Kentucky can terminate traffic described in Section 3.1 and Appendix A. ACC of Kentucky shall make available to Duo County Telephone Cooperative at the POC(s) trunks over which Duo County Telephone Cooperative can terminate traffic described in Section 3.1 and Appendix A. By mutual agreement, the Parties may interconnect on a bi-directional basis using two-way trunk groups between the Parties' networks. The traffic described in Section 3.1.4 will either be included over the common trunk group established between the Parties' networks or, at the option of Duo County Telephone Cooperative, a separate trunk group will be established by the Parties for the traffic described in Section 3.1.4. All interconnecting facilities will be at a DS1

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12/5/01

level, multiple DS1 level or DS3 level and will conform to industry standards. With the limited and sole exception of the traffic discussed in Section 3.1.4, this Agreement does not apply to, and interconnection pursuant to this Agreement cannot be used for, traffic originated, terminated or carried by or on third party networks. All methods of interconnection are subject to the compensation structure set forth in Section 5.0 and Appendix B.

**4.2 Service Arrangement.** This Agreement provides for the following interconnection arrangement between the Parties for the purpose of delivery by one Party of specific traffic for transport and termination on the other Party's network. The Parties will interconnect their respective networks based upon a Type 2A Service Interconnection ("Type 2A").

**4.2.1 Type 2A .** Type 2A involves trunk side connections to appropriate Duo County Telephone Cooperative tandem switching offices. Under a Type 2A arrangement, the interconnection facility acts like an interoffice trunk. Type 2A can by mutual agreement be used as a two-way service for originating and terminating traffic between the Parties' respective networks. With the exception of traffic discussed in Section 3.1.4, this Agreement does not apply to, and Type 2A cannot be used for, traffic originated, terminated or carried by or on third party networks.

**4.2.1.1** For traffic terminating on Duo County Telephone Cooperative, Type 2A interconnection will be used by ACC of Kentucky to deliver traffic for termination to valid NXX codes associated with Duo County Telephone Cooperative end offices that subtend the specific tandem office to which the Type 2A interconnection is made.

**4.2.1.2** Based on the specific Duo County Telephone Cooperative local service area of the originating end user, the Type 2A interconnection will be used by Duo County Telephone Cooperative to deliver traffic to designated NPA-NXXs of ACC of Kentucky for which the associated rate center (as determined by V&H coordinates) is within the specific Duo County Telephone Cooperative local service area of the originating Duo County Telephone Cooperative end user. If Duo County Telephone Cooperative establishes, consistent with the preceding sentence, any new local service area calling for Duo County originating end users, this Agreement will be amended to include any such calling. Duo County Telephone Cooperative's local service areas are as set forth in Duo County Telephone Cooperative's intrastate local service tariff. All allowable calling and called NPA-NXXs are set forth in Appendix C and can be amended only with the written agreement of both Parties.

**4.2.1.3** The voluntary delivery of traffic pursuant to Subsections 4.2.2.1 and 4.2.2.2 does not create legal or regulatory obligations for either Party that do not otherwise apply.

**4.2.1.4** ACC of Kentucky agrees that any recognition by Duo County Telephone Cooperative of rate centers and the delivery of traffic pursuant to Section 4.2.1.2 based on rate center V & H coordinates associated with NPA-NXX network numbers that ACC of Kentucky assigns to its mobile CMRS customers is only for the purposes of, and subject to all of the terms of, this Agreement. The designation of rate center V&H coordinates by ACC for NPA-NXX numbers assigned to ACC's mobile CMRS customers does not affect or determine the services offered by Duo County Telephone Cooperative or ACC of Kentucky, the services provided to end users by either Party, the rate structure applied to services provided to end users by either Party, or the rates charged to end users by either Party for the services either Party provides. Any voluntary application with respect to service offerings or the delivery of traffic by either Party based on designation of rate center V&H coordinates for the NPA-NXX numbers assigned by ACC of Kentucky to its mobile CMRS customers does not create legal or regulatory obligations for either Party that do not otherwise apply.

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**4.3 Signaling.** SS7 connectivity may be provided by mutual consent. SS7 connectivity will be provided in accordance with prevailing industry standards. The Parties agree to cooperate on the exchange of all appropriate SS7 messages for call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate full interoperability of all CLASS features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon. All SS7 signaling parameters will be provided in conjunction with traffic trunk groups, where and as available. These parameters include, but are not limited to, Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, calling party category information, charge number, etc. All parameters related to network signaling information will also be provided, such as ACC of Kentucky Information Parameter ("CIP"), wherever such information is needed for call routing and billing. Each Party will honor all Privacy Indicators as required under applicable law. ACC of Kentucky must interconnect, directly or indirectly, with the Duo County Telephone Cooperative Signal Transfer Points ("STPs") serving the local service area in which Subject Traffic and Inter-MTA Traffic will be exchanged. Duo County Telephone Cooperative may use a third party's STP and SCP facilities. ACC of Kentucky may choose a third-party SS7 signaling provider to transport signaling messages to and from Duo County Telephone Cooperative's SS7 network. In that event, ACC of Kentucky's third-party provider must present a letter of agency to Duo County Telephone Cooperative authorizing the third party to act on behalf of ACC of Kentucky. The third-party provider for ACC of Kentucky must interconnect with the Duo County Telephone Cooperative STP(s) serving the geographic area in which the traffic exchange trunk groups are located. ACC of Kentucky will be responsible for all costs associated with establishing SS7 connectivity between Duo County Telephone Cooperative and ACC of Kentucky. Where SS7 signaling is not available, in-band signaling shall be used in accordance with accepted industry standards.

## **5.0 Compensation Arrangements**

### **5.1 Subject Traffic**

5.1.1 Subject to the provisions of Section 5.1.2, each Party shall pay the other Party for the Transport and Termination of Subject Traffic that either Party delivers to the other Party's network pursuant to the provisions of this Agreement. These charges and rates do not apply to any other types of traffic or for traffic delivered in any other areas other than those set forth in this Agreement and described in Appendix A. The Parties agree that Duo County Telephone Cooperative will not provide any compensation to ACC of Kentucky for traffic associated with one-way CMRS, including paging services, provided by ACC of Kentucky.

5.1.2 The Parties agree that Duo County Telephone Cooperative will not provide any compensation to ACC of Kentucky for Subject Traffic that Duo County Telephone Cooperative delivers over the connecting facilities pursuant to this Agreement to be terminated on the network of ACC of Kentucky.

**5.2 Rate Structure.** A POC(s) will be established between the Parties' facilities-based networks as specified in Appendix A for the delivery of traffic described in Section 3.1. ACC of Kentucky must obtain special access from Duo County Telephone Cooperative subject to the rates, terms and conditions contained in Duo County Telephone Cooperative's intrastate access tariff for the purpose of the connection between the POC and Duo County Telephone Cooperative's applicable end office or tandem office. These connecting facilities are set forth in Appendix A. Duo County Telephone Cooperative will charge special access from the applicable Duo County Telephone Cooperative intrastate access tariff for the tandem connecting facilities. Special access charges for the connecting facilities will be reduced, as specified in Appendix A, to reflect the proportionate share of the total usage of the facilities that is related to Subject

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Traffic originated by Duo County Telephone Cooperative. For any specific POC, a single, combined, per-minute rate, as specified in Appendix B, will apply which encompasses total compensation for Transport, call Termination and any other facilities utilized to terminate Subject Traffic on the other Party's respective networks.

**5.3 Non-Recurring Charges.** ACC of Kentucky agrees to the non-recurring fees as set forth in Appendix B for any additions to, or added capacity for, special access connecting facilities.

**5.4 Inter-MTA Traffic.** The specific compensation arrangements set forth in this Agreement for Subject Traffic are not applicable to Inter-MTA Traffic described in Section 3.1.3. ACC of Kentucky will provide compensation to Duo County Telephone Cooperative for originating and terminating Inter-MTA Traffic according to the terms and conditions of Duo County Telephone Cooperative's applicable federal and state access tariffs. Even though there may be some land-to-mobile Inter-MTA Traffic, the Parties will presume, for purposes of this Agreement, that there will be no land-to-mobile Inter-MTA Traffic exchanged between the Parties over the connecting facilities established pursuant to this Agreement.

**5.4.1** ACC of Kentucky and Duo County Telephone Cooperative will develop mutually acceptable percent usage factors for the relative amounts of Inter-MTA Traffic and Subject Traffic delivered by ACC of Kentucky over the connecting facilities pursuant to this Agreement as defined in Section 3.1. These percentage usage factors will apply to traffic exchanged over the connecting facilities excluding the traffic discussed in Section 3.1.4 which will be measured by Duo County Telephone Cooperative and excluded from the total traffic amounts. The Parties will work together to develop an auditable report which shows, for traffic originated or terminated by ACC of Kentucky and exchanged by the Parties over the connecting facilities pursuant to this Agreement, the ratio of Inter-MTA Traffic to Subject Traffic for representative periods of time. The Parties agree that the original usage factors set forth in Appendix A will be used for a minimum of 12 months. If an auditable report can be developed to identify and measure Inter-MTA Traffic and the Parties mutually agree to new traffic percentages based on a prior 12-month period, the percentages specified in Appendix A will be amended and applied to prospective periods.

**5.4.2** The Parties recognize the Inter-MTA Traffic (defined in Section 3.1.3) may be both Interstate and Intrastate in nature. For the Inter-MTA Traffic, the Parties will develop mutually acceptable percent Interstate and Intrastate factors. The percentages are specified in Appendix A. The relative Interstate and Intrastate percentages will be applied for the duration of this Agreement. Interstate access charges will apply to the percentage of Inter-MTA Traffic that is interstate in nature; intrastate access charges will apply to the percentage of Inter-MTA Traffic that is intrastate in nature.

**5.4.3** The designation of traffic as either Subject Traffic (for which Transport and Termination charges apply) or Inter-MTA Traffic (for which access charges apply) for purposes of compensation pursuant to this Agreement shall be based on the actual originating and terminating points of the complete end-to-end call; provided, however, that for ACC of Kentucky the location of the cell site serving the CMRS end user when the call begins shall be used as the determinant of the geographic location of the mobile customer.

**5.5 Traffic Distribution.** The relative directionality and distribution of traffic with respect to the connecting facilities is set forth in Appendix A. The Parties agree to use the default percentages set forth in Appendix A for the application of charges pursuant to this Agreement. The default percentages will be used for a minimum of 12 months. At the request of either Party thereafter, the factors will be adjusted based on the parties' respective percentages of intra-MTA traffic delivered over the connecting facilities established pursuant to this

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12/1/21

Agreement, excluding the traffic discussed in Section 3.1.4. In any event, the Parties agree that the portion of intra-MTA traffic that is mobile-to-land will not exceed 72 percent and the portion that is land-to-mobile will not exceed 50 percent. In the event of a dispute regarding the adjustment to the intra-MTA factors, the dispute will be resolved pursuant to the provisions of Section 14.9.

## 6.0 Notice of Changes

If a Party makes a change in its network which it believes will materially affect the interoperability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party. In the event that the provision of ninety (90) days notice is not possible, the Party making the change shall provide notification within ten (10) business days after the determination to make the network change.

## 7.0 General Responsibilities of the Parties

7.1 Thirty (30) days after the Effective Date of each quarter during the term of this Agreement, ACC of Kentucky shall provide Duo County Telephone Cooperative with a rolling six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services provided under this Agreement and in the form and such detail as agreed by the Parties. The Parties agree that each forecast provided under this Section shall be deemed "Proprietary Information."

7.2 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring and billing traffic from the other Party's network and for delivering of such traffic it receives in that mutually acceptable format and to terminate the traffic it receives in that mutually acceptable format to the proper address on its network. Such facility shall be designed based upon the description provided under Section 4.0 above. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

7.3 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.4 The characteristics and methods of operation of any circuits, facilities or equipment of one Party connected with the services, facilities or equipment of the other Party shall not interfere with or impair service over any facilities of the other Party, its affiliated companies or its connecting and concurring carriers involved in its services; or cause damage to the other Party's plant, impair the privacy of any communications carried over the facilities or create hazards to the employees of the other Party, its affiliated companies or its connecting and concurring carriers or the public.

7.5 If such characteristics or methods of operation are not in accordance with the preceding paragraph, either Party will notify the other Party that temporary discontinuance of the circuit, facility or equipment may be required; however, when prior notice is not practicable, either Party may forthwith temporarily discontinue the use of a circuit, facility or equipment if such action is reasonable under the circumstances. In such case of temporary discontinuance, either Party will promptly notify the other Party and provide the other Party with the opportunity to correct the condition which gave rise to the temporary discontinuance. No allowance for

SEW  
12/5/21

interruption will be applicable.

7.6 Each Party is solely responsible for the services it provides to its customers and to other telecommunications carriers.

7.7 Each Party is responsible for administering NXX codes assigned to it.

7.8 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g., workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage of bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).

7.9 The physical connection of facilities, delivery of traffic and/or termination of traffic may be temporarily discontinued by either Party upon thirty (30) days' written notice to the other Party for repeated or willful violation of or refusal to comply with any of the provisions of this Agreement.

## 8.0 Effective Date, Term and Termination

8.1 This Agreement shall become effective thirty (30) days following State Commission approval of this Agreement. When the Agreement becomes effective, the provisions contained in Section 2.0 of this Agreement shall apply with respect to the interpretation and construction of this Agreement and its ongoing relation to other references, including subsequent tariffs.

8.2 The initial term of this Agreement shall be two (2) years from the effective date and shall then automatically renew on a year-to-year basis. Upon expiration of the initial term, either Party may terminate this Agreement by providing written notice of termination to the other Party, with such written notice to be provided at least sixty (60) days in advance of the date of termination.

8.2.1 Post-Termination Arrangements. For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act, but in no case will the existing service arrangements continue for longer than 12 months following the date on which notice of termination is provided by either Party to the other.

8.3 Upon termination or expiration of this Agreement in accordance with this Section:

- (a) each Party shall comply immediately with its obligations set forth above;
- (b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;
- (c) each Party's indemnification obligations shall survive termination or expiration of this Agreement.

8.4 The arrangements pursuant to this Agreement including the provision of services or facilities shall immediately terminate upon the suspension, revocation or termination by other means of either Party's authority to provide services. For Duo County Telephone Cooperative,

56w  
12/17/01

authority involves the provision of local exchange or exchange access services. For ACC of Kentucky, authority involves the provision of CMRS services under license from the FCC.

8.5 The services and facilities arrangements pursuant to this Agreement may be terminated by either Party upon not less than ten (10) days notice to the other Party for failure to pay undisputed amounts on the dates or times specified for the facilities and services furnished pursuant to this Agreement.

8.6 Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party, or

(b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation of any of the material terms and conditions of this Agreement.

(c) Default as may be defined elsewhere in this Agreement.

## 9.0 Cancellation Charges

Except as provided herein, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.

## 10.0 Indemnification

10.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorney's fees (collectively, a "Loss"), (a) whether suffered, made, instituted or asserted by any other party or person, relating to personal injury to or death of any person, defamation or for loss, damage to or destruction of real and/or personal property, whether or not owned by others, arising during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 6.0 shall affect or limit any claims, remedies or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s) regulations or laws for the indemnified Party's provision of said services.

10.2 The indemnification provided herein shall be conditioned upon:

(a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

(b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.

(c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not unreasonably withheld.

(d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third

SEW  
12/5/01

party claimant in excess of such limitation of liability.

(e) The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

10.3 In addition to its indemnity obligations under Section 10.1 and 10.2, each Party shall provide, in its Tariffs or customer contracts that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any consequential damages (as defined in Subsection 11.2, below).

#### 11.0 Limitation of Liability

11.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 11. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions, interruptions, delays, errors or defects occurring in the course of furnishing any services, arrangements or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects.

11.2 Neither Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 10.

11.3 The Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties shall assert the applicability of any limitation on liability to customers that may be contained in either Party's applicable tariff(s) or customer contracts.

#### 12.0 Compliance with Laws and Regulations

12.1 Each Party shall comply with all federal, state and local statutes, regulations, rules, ordinances, judicial decisions and administrative rulings applicable to its performances under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations hereunder.

12.2 The Parties understand and agree that this Agreement will be filed with the Commission. The Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the

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12/5/01

Commission rejects this Agreement, both Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the Agreement. Furthermore, this Agreement is subject to change, modification or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction. Notwithstanding these mutual commitments, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related specifically to this Agreement or other types of arrangements prescribed in this Agreement.

### **13.0 Disclaimer of Representation and Warranties**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

### **14.0 Miscellaneous**

#### **14.1 Authorization**

14.1.1 Duo County Telephone Cooperative is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

14.1.2 ACC of Kentucky is a limited liability corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

#### **14.2 Disclaimer of Agency; No Third Party Beneficiaries, Independent Contractor**

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**14.3 Force Majeure.** Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of

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12/5/01

the date of this Agreement, including, without limitation: adverse weather conditions fire, explosion, power failure, acts of God, war, revolution, civil commotion or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affect Party shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interferences (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

#### 14.4 Treatment of Proprietary and Confidential Information

14.4.1 Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including, but not limited to, trade secrets, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary information shall remain the property of the disclosing Party. Both Parties agree that all Proprietary Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Proprietary Information will be returned to the owner within a reasonable time. Both Parties agree that the Proprietary Information shall be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Proprietary Information. Both Parties agree to protect the Proprietary Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Proprietary Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Proprietary Information received as they would use to protect their own confidential and proprietary information.

14.4.2 Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Proprietary Information that is either: 1) by a non-party to the Agreement; 2) lawfully obtained from any source other than the owner of the Proprietary Information; 3) publicly know through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

**14.5 Choice of Law.** The construction, interpretation, enforcement and performance of this Agreement shall be in accordance with the laws of the Commonwealth of Kentucky without regard to its conflict of laws and principles.

#### 14.6 Taxes

14.6.1 It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply:

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12/5/01

#### 14.6.2 Definitions

14.6.2.1 For purposes of this Subsection 11.6, the terms "taxes" and "fees" shall include but not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights-of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments thereof, excluding any taxes levied on income.

14.6.2.2 The term "Providing Party" shall mean the Party whose rates apply to the transaction. The term "Purchasing Party" shall be the Party responsible for payment of compensation under this Agreement with respect to a transaction. The term "Selling Party" shall have the same meaning as Providing Party.

#### 14.6.3 Taxes and Fees Imposed Directly on Either Seller or Purchaser

14.6.3.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the Providing Party to its customers, shall be borne and paid by the Providing Party.

14.6.3.2 Taxes and fees imposed on the Purchasing Party, which are not required to be collected and/or remitted by the Providing Party, shall be borne and paid by the Purchasing Party.

#### 14.6.4 Taxes and Fees Imposed on Purchaser but Collected and Remitted by Seller

14.6.4.1 Taxes and fees imposed on the Purchasing Party shall be borne by the Purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the Providing Party.

14.6.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party remains liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.4.3 If the Purchasing Party determines that in its opinion any such taxes or fees are not payable, the Providing Party shall not bill such taxes or fees to the Purchasing Party if the Purchasing Party provides written certification, reasonably satisfactory to the Providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the Purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the Providing Party, the Purchasing Party may contest the same in good faith, at its own expense. In any such contest, the Purchasing Party shall promptly furnish the Providing Party with copies of all filings in any proceeding, protest or legal challenge, all rulings issued in connection therewith, and all correspondence between the Purchasing Party and the taxing authority.

14.6.4.4 In the event that all or any portion of any amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

SEW  
12/5/01

14.6.4.5 It is ultimately determined that any additional amount of such tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.6.4.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.

14.6.4.7 Each Party shall notify the other Party in writing of any assessment proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### 14.6.5 Taxes and Fees Imposed on Seller But Passed On to Purchaser

14.6.5.1 Taxes and fees imposed on the Providing Party, which are permitted or required to be passed on by the Providing Party to its customers, shall be borne by the Purchasing Party.

14.6.5.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the Purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the Providing Party at the time that the respective service is billed.

14.6.5.3 If the Purchasing Party disagrees with the Providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the Providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the Purchasing Party shall abide by such determination and pay such taxes or fees to the Providing Party. The Providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees, provided, however, that any such contest undertaken at the request of the Purchasing Party shall be at the Purchasing Party's expense.

14.6.5.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of such tax or fee, or to avoid the existence of a lien on the assets of the Providing Party during the pendency of such contest, the Purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

14.6.5.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the Purchasing Party shall pay such additional amount, including any interest and penalties thereon.

14.6.5.6 Notwithstanding any provision to the contrary, the Purchasing Party shall protect, indemnify and hold harmless (and defend at the Purchasing Party's expense) the Providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the Providing Party in connection with any claim for or contest of any such tax or fee.

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12/5/01

14.6.5.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

14.6.6 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may be reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

**14.7 Assignability.** Either Party may, with the other Party's prior written consent, assign this including, without limitation, its parent or other affiliate; such consent shall not be unreasonably withheld upon the provision of reasonable evidence by the proposed assignee that it has the resources, ability and authority to provide satisfactory performance under this Agreement. Any assignment or delegation in violation of this Subsection 14.7 shall be void and ineffective and constitute a default of this Agreement. This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assignee.

#### **14.8 Billing and Payment; Disputed Amounts**

14.8.1 Bills are due and payable upon receipt but become delinquent thirty (30) days following the bill date. Although it is the intent of both Parties to submit timely and accurate statements or charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely fashion.

14.8.2 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party.

14.8.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.

14.8.4 If the Parties are unable to resolve issues related to the Disputed Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to Subsection 14.8.3, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity.

14.8.5 The Parties agree that all negotiations pursuant to this Subsection 14.8

56w  
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shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

14.8.6 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1 1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

**14.9 Dispute Resolution.** Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action at the Kentucky Public Service Commission or a Kentucky judicial forum or upon mutual agreement, an acceptable arbitration process may be utilized.

**14.10 Notices.** Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service or requested to the following addresses of the Parties:

For: ACC

ATTN: Vice President  
Timothy J. Duffy  
ACC of Kentucky  
14201 Wireless Way  
Oklahoma City, Oklahoma

For: Duo County Telephone Cooperative

ATTN: Executive Vice President  
Duo County Telephone Coop. Corp., Inc  
2150 North Main Street  
P. O. Box 80  
Jamestown, KY 42629

with a copy to:

Leon M. Bloomfield  
Wilson and Bloomfield LLP  
1901 Harrison Street, Suite 1630  
Oakland, California 94612

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery or (iii) three (3) days after mailing in the case of first class or certified U.S. mail.

**14.11 Joint Work Product.** The Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

#### **14.12 No License**

14.12.1 Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

14.12.2 Neither Party shall have any obligation to defend, indemnify or hold harmless or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand or

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proceeding by any third party alleging or asserting that the use of any circuit, apparatus or system, or the use of any software, or the performance of any service or method or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

14.12.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

**14.13 Survival.** The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**14.14 Entire Agreement.** This Agreement and any Exhibits, Appendices, Schedules or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

**14.15 Non-Waiver.** Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

**14.16 Publicity and Use of Trademarks or Service Marks.** Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

**14.17 Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language that does not materially alter the economic effect of this Agreement on either Party. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

**14.18 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**14.19 Modification, Amendment, Supplement or Waiver.** No modification, amendment, supplement to or waiver of the Agreement or any of its provisions shall be effective

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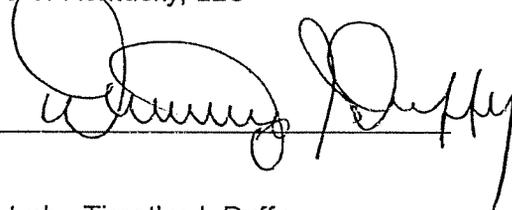
and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided or to require performance of any of provisions hereof shall in no way be construed to be a waiver of such provisions or options.

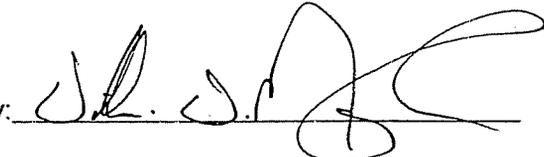
**14.20 Changes in Law.** If any legislative, regulatory, judicial or other government decision, order, determination or action, or any change in law applicable to this Agreement materially affects any material provision of this Agreement, the rights or obligations of either Party herein, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend this Agreement in writing in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to applicable law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 20<sup>th</sup> day of December, 2001.

ACC of Kentucky, LLC

Duo County Telephone Coop. Corp., Inc.

By: 

By: 

Printed: Timothy J. Duffy

Printed: William W. Magruder

Title: Vice President

Title: Executive Vice President

SEW  
12-5-01

DESIGNATION OF POINT(S) OF CONNECTION  
AND TRAFFIC DISTRIBUTION  
CMRS-LEC AGREEMENT

This Exhibit specifies the Points of Connection ("POCs") pursuant to the Agreement for Facilities-Based Network Interconnection for Transport and Termination of Telecommunications Traffic (CMRS-LEC Agreement) between ACC of Kentucky and Duo County Telephone Cooperative, and the relative directionality and distribution of traffic with respect to the connecting facilities associated with each POC as follows:

Type 2A Interconnection

POC #1 - For the exchange of LEC-CMRS two-way traffic between the Parties' networks within the Louisville Kentucky MTA pursuant to this Agreement, the Parties agree to connect forty-eight (48) trunks using two (2) DS1 facilities by means of cable at a junction point located at V and H coordinates: V - 6695; H - 2540.

The portion of traffic over the connecting facilities that is IXC traffic (as discussed in Section 3.1.4 of the Agreement) will be identified and measured by Duo County Telephone Cooperative and excluded from the total two-way traffic. For the remaining total amount of two-way traffic delivered by the Parties over the connecting facilities, the Parties agree to the following distribution of traffic:

% Mobile-to-Land traffic terminating on Duo County Telephone Cooperative's network = 72%  
% Land-to-Mobile traffic terminating on ACC of Kentucky's network = 28%

For the Seventy-Two percent (72%) of total non-IXC traffic terminating on Duo County Telephone Cooperative's network, the Parties agree to the following distribution of traffic:

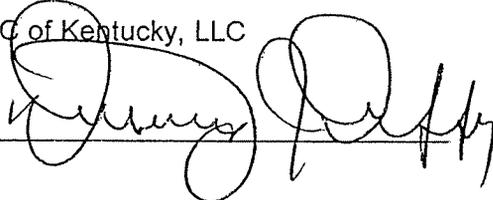
% Subject Traffic = 95%  
% Intrastate Inter-MTA Traffic = 5%  
% Interstate Inter-MTA Traffic = 0%

For the Twenty-Eight percent (28%) of total non-IXC traffic terminating on ACC of Kentucky's network the Parties agree to the following distribution of traffic:

% Subject Traffic = 100%  
% Intrastate Inter-MTA Traffic = 0%  
% Interstate Inter-MTA Traffic = 0%

Approved and executed this 20<sup>th</sup> day of December, 2001.

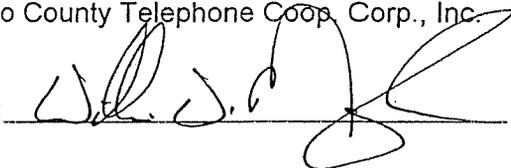
ACC of Kentucky, LLC

By: 

Printed: Timothy J. Duffy

Title: Vice President

Duo County Telephone Coop. Corp., Inc.

By: 

Printed: William W. Magruder

Title: Executive Vice President

SEW  
12-5-01

SCHEDULE OF CHARGES PURSUANT TO THE AGREEMENT FOR FACILITIES-BASED NETWORK INTERCONNECTION FOR TRANSPORT AND TERMINATION OF TELECOMMUNICATIONS TRAFFIC CMRS-LEC AGREEMENT

This Exhibit specifies the rates for the transport and termination of traffic delivered by one Party to the network of the other Party pursuant to the Agreement for Facilities-Based Network Interconnection for Transport and Termination of Telecommunications Traffic (CMRS-LEC Agreement) between ACC of Kentucky and Duo County Telephone Cooperative, as follows:

Charges for Transport, Termination and Tandem Switching for Subject Traffic:

Subject Traffic originated by ACC of Kentucky and delivered to Duo County Telephone Cooperative over Type 2A trunks at POC # 1: rate per terminating minute of use for all end offices of Duo County Telephone Cooperative through its Russell Springs tandem switch. . . . . \$ 0.01199/MOU

Subject Traffic for which Transport and Termination charges apply originated by Duo County Telephone Cooperative and delivered to ACC of Kentucky over Type 2A trunks at POC #1: rate per terminating minute of use. . . . . \$ 0.00000/MOU (Zero)

Charges for Access Transport, Access Termination and Access Tandem Switching for Inter-MTA Traffic:

Current Duo County Telephone Cooperative's access tariffs in the proper jurisdiction apply.

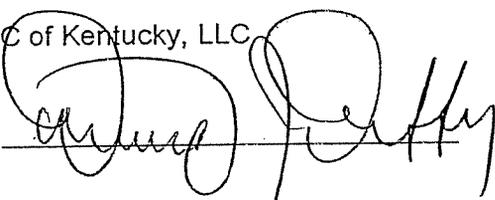
Special Access Connecting Facilities:

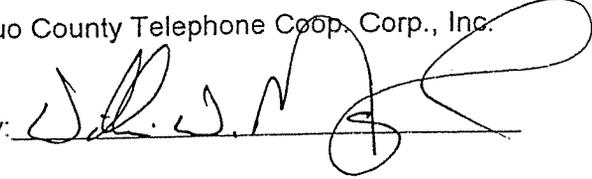
Duo County Telephone Cooperative will charge ACC of Kentucky special access monthly recurring rates pursuant to Duo County Telephone Cooperative's effective intrastate access tariff for the connecting facilities set forth in Appendix A.

Duo County Telephone Cooperative will charge ACC of Kentucky special access non-recurring rates pursuant to Duo County Telephone Cooperative's effective intrastate access tariff for any new connecting facilities set forth in Appendix A.

Duo County Telephone Cooperative will credit ACC of Kentucky 26.992% of the charges specified in this section for its portion of special access transport. Should the parties mutually agree to revise the percentage traffic flow calculation, the percent special access credit will be modified to reflect the revised traffic flow percentage, but under no circumstances will the credit exceed 50%.

Approved and executed this 20<sup>th</sup> day of December 2001.

ACC of Kentucky, LLC  
By: 

Duo County Telephone Coop. Corp., Inc.  
By: 

Printed: Timothy J. Duffy

Printed: William W. Magruder

Title: Vice President

Title: Executive Vice President

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12-5-01

SCHEDULE OF ALLOWABLE NXX CALLING SCOPE  
FOR TRAFFIC EXCHANGE AT POC #1  
AND  
DESIGNATION OF ACC OF KENTUCKY, LLC CMRS SERVICE AREA

<u>Duo County Telephone Cooperative Exchange - NXX</u>		<u>ACC of Kentucky - NXX and Associated Local Service Area</u>	
Russell Springs	866/858	Russell Springs	585
Jamestown	343	Russell Springs	585
Fairplay	378/379	Fairplay	250
Burkesville Rural	430/433	Burkesville Rural	406

**ACC of Kentucky CMRS Service Area by Counties in the Commonwealth of Kentucky:**

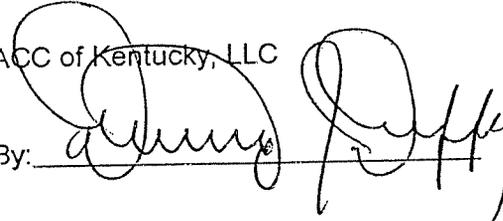
RSA 4: Spencer, Anderson, Hardin, Nelson, Washington, Mercer, Marion, Larue, Green, and Taylor.

RSA 5: Barren, Monroe, Metcalfe, Adair, Cumberland, Russell, Clinton, Wayne, McCreary, and Hart.

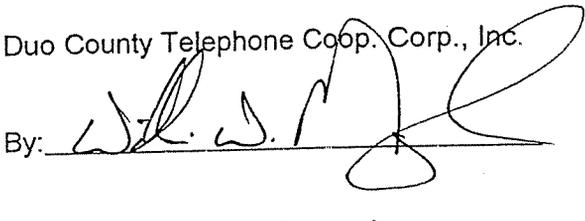
RSA 6: Madison, Garrard, Boyle, Casey, Lincoln, Rockcastle, Pulaski, and Laurel.

RSA 8: Mason, Lewis, Fleming, Bath, Montgomery, Rowan, Bracken, Robertson, Nicholas, and Menifee

Approved and executed this 20<sup>th</sup> day of December, 2001.

ACC of Kentucky, LLC  
By: 

Printed: Timothy J. Duffy  
Title: Vice President

Duo County Telephone Coop. Corp., Inc.  
By: 

Printed: William W. Magruder  
Title: Executive Vice President

## EXHIBIT 2

**DESIGNATION OF POINT(S) OF CONNECTION  
AND TRAFFIC DISTRIBUTION  
CMRS-LEC AGREEMENT**

This Exhibit specifies the Points of Connection ("POCs") pursuant to the Agreement for Facilities-Based Network Interconnection for Transport and Termination of Telecommunications Traffic (CMRS-LEC Agreement) between Nextel Partners and Duo County Telephone Cooperative Corp., Inc. ("Duo County"), and the relative directionality and distribution of traffic with respect to the connecting facilities associated with each POC as follows:

**Type 2A Interconnection**

POC #1 – For the exchange of LEC-CMRS two-way traffic between the Parties' networks within the Louisville Kentucky MTA pursuant to this Agreement, the Parties agree to connect forty-eight (48) trunks using two (2) DS1 facilities by means of cable at a junction point located at V and H coordinates: V - 6707; H - 2583.

The portion of traffic over the connecting facilities that is IXC traffic will be identified and measured by Duo County and excluded from the total two-way traffic. For the remaining two-way traffic delivered by the Parties over the connecting facilities, the Parties agree to the following distribution of traffic:

% Mobile-to-Land traffic terminating on Duo County's network = 72%  
% Land-to-Mobile traffic terminating on Nextel's network = 28%

unless Duo county provides specific measurement of traffic.

For the seventy-two percent (72%) of total non-IXC traffic terminating on Duo County's network, the Parties agree to the following distribution of traffic:

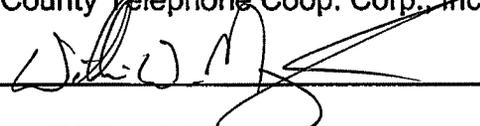
% Subject Traffic = 95%  
% Intrastate Inter-MTA Traffic = 5%  
% Interstate Inter-MTA Traffic = 0%

For the twenty-eight percent (28%) of total non-IXC traffic terminating on Nextel's network, the Parties agree to the following distribution of traffic:

% Subject Traffic = 100%  
% Intrastate Inter-MTA Traffic = 0%  
% Interstate Inter-MTA Traffic = 0%

Approved and executed this 12<sup>th</sup> day of July, 2005.

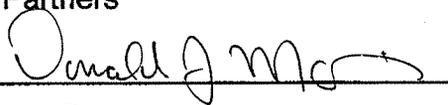
Duo County Telephone Coop. Corp., Inc.

By: 

Name: William W. Magruder

Title: Executive Vice President/CEO

Nextel Partners

By: 

Name: Donald J. Manning  
Vice President

Title: \_\_\_\_\_

**SCHEDULE OF ALLOWABLE NXX CALLING SCOPE  
FOR TRAFFIC EXCHANGE AT POC #1  
AND  
DESIGNATION OF NEXTEL PARTNERS CMRS SERVICE AREA**

<u>Duo County Exchange – NXX</u>		<u>Nextel Partners – NXX And Associated Local Service Area</u>	
Russell Springs	866/858	Russell Springs	Pending Assignment
Jamestown	343	Jamestown	Pending Assignment
Fairplay	378/379	Fairplay	N/A
Burkesville Rural	430/433	Burkesville Rural	N/A

**Nextel Service Area By Counties in the Commonwealth of Kentucky:**

All Kentucky counties except Boone, Kenton, Campbell, Gallatin, Grant, Pendleton and Bracken.

Approved and executed this 12<sup>th</sup> day of July, 2005.

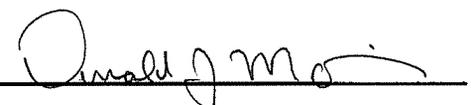
Duo County Telephone Coop. Corp., Inc.

By: 

Name: William W. Magruder

Title: Executive Vice President/CEO

Nextel Partners

By: 

Name: Donald J. Manning  
**Vice President**

Title: \_\_\_\_\_